

REMARKS

This responds to the Office Action mailed on July 10, 2008.

Claims 1, 17, 28, 35, and 36 are amended, no claims are canceled, and no claims are added; as a result, claims 1-36 are now pending in this application.

§101 Rejection of the Claims

Claim 36 was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant has amended the Detailed Description to overcome this rejection. In particular, Applicant has removed reference to “carrier wave signals” from the scope of “machine readable medium.” Applicant respectfully requests reconsideration and withdrawal of this basis of this rejection of claim 36.

§103 Rejection of the Claims

Claims 1-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lagerweij et al. (U.S. Publication No. 2003/0217163; hereinafter “Lagerweij”) in view of Jacoby (U.S. Publication No. 2004/0254887), and further in view of Seago et al. (U.S. Publication No. 2004/0054923; hereinafter “Seago”). Applicant has amended independent claims 1, 17, 28, 35, and 36 to overcome these rejections.

Concerning claims 1, 17, 28, 35, and 36:

Applicant cannot find in the cited portions of Legerweij, Jacoby, and/or Seago any description, teaching, or suggestion of “wherein the delivery of the content to the content consumer is timed by the digital rights server,” as presently recited in claim 1, and similarly recited in independent claims 17, 28, 35, and 36. Instead, Jacoby refers to a messaging scheme between the streaming server 115, client media player 110, and mediaframe server 140.¹ In particular, Jacoby’s operation involves transmitting a streaming media file with an embedded metering event from a streaming server 115 to a client media player 110.² The client media player 110 “appends the embedded metering events to metering URL 127 and returns the

¹ Jacoby at ¶¶ 0051-0054.

² Jacoby at ¶ 0051

appended metering URLs to the mediaframe servers.”³ The mediaframe server then uses the appended metering URLs to “tick a user meter stored in the mediaframe server.”⁴ In contrast, Applicant’s application describes systems and methods that time the delivery of content at a digital rights server.

Moreover, Applicant cannot find in the cited portions of Legerweij, Jacoby, and/or Seago any description, teaching, or suggestion of “detecting a termination of the content delivery” and then “in response to the detecting of the termination of the content delivery, updating the access rights of the content consumer with delivered time data in response to a delivered time during which the content was delivered to the content consumer,” as presently recited in claim 17, and similarly recited in independent claims 1, 28, 35, and 36. Instead, Jacoby merely detects metering events and in response to detecting a metering event, initiates a communication with a mediaframe server using a specially-formed URL. Although the metering event may be placed at any position in a streaming media file, the mere fact that a metering event may be placed at the end of a media file is not the same as actually detecting the termination of the content delivery, as presently recited in these claims.

Thus, because Legerweij, Jacoby, and/or Seago fail to describe or disclose all of the elements of these claims, Applicant respectfully submits that no *prima facie* case of obviousness has been established and requests reconsideration and withdrawal of the basis of these rejections of claims 1, 17, 28, 35, and 36.

Concerning dependent claim 6:

Applicant cannot find in the cited portions of Legerweij, Jacoby, and/or Seago any description, teaching, or suggestion of “wherein further delivery is denied after a certain position within the media has been reached,” as recited in claim 6. Instead, the cited portion of Legerweij merely states:

... Another example relates to a live webcast of a Formula 1 racing event. A limited amount of licenses to a live webcast of the Formula 1 race may be sold. After 50.000 licenses have been issued by the access server 2, the race is sold out and it is known exactly how many users can be expected.

³ Jacoby at ¶ 0053

⁴ Jacoby at ¶ 0060

This information can be used to control bandwidth cost. The race ends at 11:00 PM, that is when normal licenses expire defined by a business rule. To 5.000 fans who want to see the award ceremony between 11:00 PM and 12:00PM, licenses that expire at 12:00 PM are sold at a premium rate.⁵

As can be seen, the cited portion of Lagerweij only refers to using a specific time (i.e., 11:00 PM or 12:00 PM) to control license expiration. This is not the same as using a “certain position within the media” to deny further delivery, as recited in claim 6.

Thus, because Legerweij, Jacoby, and/or Seago fail to describe or disclose all of the elements of claim 6, Applicant respectfully submits that no *prima facie* case of obviousness has been established and requests reconsideration and withdrawal of the basis of this rejection of claim 6.

Concerning remaining dependent claims 2-16, 18-27, and 29-34:

Applicant respectfully submits that claims 2-16, 18-27, and 29-34 depend directly or indirectly on independent claims 1, 17, and 28, respectively. As such, these dependent claims incorporate all the limitations of their parent independent claims. Accordingly, Applicant submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully requests withdrawal of any basis of rejection of claims 2-16, 18-27, and 29-34.

⁵ Lagerweij at ¶ 0049

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 371-2134 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 371-2134

Date October 27, 2008

By 

John I. Fischer
Reg. No. 60,900

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 27th day of October, 2008.

Kathryn McCook
Name

Kathryn McCook
Signature